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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 CRIME, JUSTICE & AMERICA, INC., a  
10 California Corporation; and RAY HRDLICKA,  
an individual,

11 Plaintiffs,

12 v.

13 JEFFERSON COUNTY; JEFFERSON  
14 COUNTY SHERIFF'S OFFICE; TONY  
15 HERNANDEZ, individually and in his official  
16 capacity as Sheriff of Jefferson County,  
Washington; and DOES 1-20, in their individual  
and official capacities,

17 Defendants.  
18

No. 3:12-cv-05145-BHS

DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES TO  
AMENDED COMPLAINT

19 COME NOW the Defendants Jefferson County, Jefferson County Sheriff's Office, and  
20 Tony Hernandez, (hereinafter "Defendants") by and through their counsel, and Answer  
21 Plaintiffs' Amended Complaint and its numbered allegations as follows:

22 1. Defendants deny the emotional portion of Paragraph 1 which does not require an  
23 Answer in any event (e.g., "ensnared in"), and admits that plaintiff Crime, Justice & America is a  
24 magazine, but are without knowledge or information sufficient to form a belief as to the truth of  
25  
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DEFENDANTS' ANSWER AND AFFIRMATIVE  
DEFENSES TO AMENDED COMPLAINT - 1  
Case No. 3:12-cv-05145-BHS

FOSTER PEPPER PLLC  
422 W. RIVERSIDE, SUITE 1310  
SPOKANE, WASHINGTON 99201-0302  
PHONE (509) 777-1600 FAX (509) 777-1616

1 the remaining allegations contained in Paragraph 1 of Plaintiffs' Complaint, and therefore deny  
2 the same.

3 2. Defendants deny Paragraph 2. Plaintiffs have never "sought to deliver" materials  
4 to a single inmate in the Jefferson County facility, as far as these answering defendants are  
5 aware.

6 3. These answering defendants are not required to answer the legal conclusions  
7 stated in Paragraph 3. These answering defendants do not dispute that plaintiffs make  
8 allegations related to the Civil Rights Act and assert in Count II a claim in which they cite to the  
9 Washington Constitution.

10 4. These answering defendants acknowledge subject matter jurisdiction over the  
11 federal questions alleged, but not over the claims as to which supplemental jurisdiction is  
12 alleged.

13 5. Personal jurisdiction and venue are admitted.

14 6. Defendants are without knowledge or information sufficient to form a belief as to  
15 the truth of the allegations contained in Paragraph 6 of Plaintiffs' Complaint, and therefore deny  
16 the same.

17 7. Defendants are without knowledge or information sufficient to form a belief as to  
18 the truth of the allegations contained in Paragraph 7 of Plaintiffs' Complaint and therefore deny  
19 same.

20 8. By way of Answer to the allegations in Paragraph 8, Defendants admit the same.

21 9. By way of Answer to Paragraph 9, defendants deny that there is an entity known  
22 as the "Jefferson County Sheriff's Office" with the capacity to sue and be sued in its own name,  
23 or that the Jail is a "department" of Jefferson County.

24 10. By way of Answer to Paragraph 10, Sheriff Tony Hernandez is a resident of  
25 Jefferson County and is the Sheriff of Jefferson County, Washington. Defendants deny that  
26 defendant Hernandez is an "agent" of Jefferson County. Defendants admit that Sheriff

1 Hernandez is the ultimate decision making authority for jail mail policies. Except as expressly  
2 admitted herein, Paragraph 10 is denied.

3 11. By way of Answer to Paragraph 11, Denied.

4 12. By way of Answer to Paragraph 12, Denied.

5 13. By way of Answer to Paragraph 13, the jury demand requires no response.

6 14. By way of Answer to Paragraph 14, Defendants are without knowledge or  
7 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14  
8 of Plaintiffs' Complaint and therefore deny the same.

9 15. Defendants are without knowledge or information sufficient to form a belief as to  
10 the truth of the allegations contained in Paragraph 15 of Plaintiffs' Complaint and therefore deny  
11 the same.

12 16. Defendants are without knowledge or information sufficient to form a belief as to  
13 the truth of the allegations contained in Paragraph 16 of Plaintiffs' Complaint and therefore deny  
14 the same.

15 17. Defendants are without knowledge or information sufficient to form a belief as to  
16 the truth of the allegations contained in Paragraph 17 of Plaintiffs' Complaint and therefore deny  
17 the same.

18 18. Defendants are without knowledge or information sufficient to form a belief as to  
19 the truth of the allegations contained in Paragraph 18 of Plaintiffs' Complaint and therefore deny  
20 the same.

21 19. Defendants are without knowledge or information sufficient to form a belief as to  
22 the truth of the allegations contained in Paragraph 19 of Plaintiffs' Complaint and therefore deny  
23 the same.

24 20. Defendants are without knowledge or information sufficient to form a belief as to  
25 the truth of the allegations contained in Paragraph 20 of Plaintiffs' Complaint and therefore  
26 denies same.

1           21. Defendants are without knowledge or information sufficient to form a belief as to  
2 the truth of the allegations contained in Paragraph 21 of Plaintiffs' Complaint and therefore deny  
3 the same.

4           22. Defendants are without knowledge or information sufficient to form a belief as to  
5 the truth of the allegations contained in Paragraph 22 of Plaintiffs' Complaint and therefore  
6 denies same. Defendants admit that the quote is found at the Web address stated.

7           23. Defendants are without knowledge or information sufficient to form a belief as to  
8 the truth of the allegations contained in Paragraph 23 of Plaintiffs' Complaint and therefore deny  
9 the same.

10          24. Defendants are without knowledge or information sufficient to form a belief as to  
11 the truth of the allegations contained in Paragraph 24 of Plaintiffs' Complaint and therefore deny  
12 the same.

13          25. Defendants are without knowledge or information sufficient to form a belief as to  
14 the truth of the allegations contained in Paragraph 25 of Plaintiffs' Complaint and therefore deny  
15 the same.

16          26. Defendants are without knowledge or information sufficient to form a belief as to  
17 the truth of the allegations contained in Paragraph 26 of Plaintiffs' Complaint and therefore deny  
18 the same. Defendants are uncertain as to the meaning of this Paragraph.

19          27. Defendants are without knowledge or information sufficient to form a belief as to  
20 the truth of the allegations contained in Paragraph 27 of Plaintiffs' Complaint and therefore deny  
21 the same.

22          28. Defendants are without knowledge or information sufficient to form a belief as to  
23 the truth of the allegations contained in Paragraph 28 of Plaintiffs' Complaint and therefore deny  
24 the same. These answering defendants have offered to accept for general distribution the  
25 percentage stated by plaintiffs.  
26

1           29. Defendants are without knowledge or information sufficient to form a belief as to  
2 the truth of the allegations contained in Paragraph 29 of Plaintiffs' Complaint and therefore deny  
3 the same. Defendants do not believe plaintiff has ever mailed a single copy to a Jefferson  
4 County Jail inmate.

5           30. Defendants are without knowledge or information sufficient to form a belief as to  
6 the truth of the allegations contained in Paragraph 30 of Plaintiffs' Complaint and therefore deny  
7 the same.

8           31. Defendants are without knowledge or information sufficient to form a belief as to  
9 the truth of the allegations contained in Paragraph 31 of Plaintiffs' Complaint and therefore deny  
10 the same.

11           32. Deny Paragraph 32.

12           33. Deny Paragraph 33.

13           34. Deny Paragraph 34. The Web Site is not "stipulated," nor does it accurately, in  
14 this case, reflect current jail mail policy and actions taken pursuant thereto in this case.

15           35. Deny Paragraph 35. These answering defendants did not prevent a single issues  
16 of plaintiffs' magazine from reaching a single inmate, to the best of the knowledge of these  
17 defendants.

18           36. Deny Paragraph 36.

19           37. Deny Paragraph 37.

20           38. Deny Paragraph 38. Some defendants act under color of law with respect to the  
21 subject matter of this paragraph, but it is expressly denied that any action undertaken under color  
22 of law denied a single inmate access to plaintiffs' publication.

23           39. Deny Paragraph 39.

24           40. Deny Paragraph 40.

25           41. Deny Paragraph 41.

26           42. (a) Deny Paragraph 42(a).

1 (b) Deny Paragraph 42(b).

2 43. Deny Paragraph 43. Paragraphs 43 and 44 read like a brief, and contain plaintiffs  
3 interpretations of judicial decisions and other authorities, with which these defendants do not in  
4 all cases agree. These are statements of law, not allegations of fact.

5 44. Deny Paragraph 44. See also Answer to Paragraph 43.

6 45. Deny Paragraph 45.

7 46. Deny Paragraph 46.

8 47. Defendants re-allege and incorporate herein each answer included in Paragraphs 1  
9 through 46.

10 48. Deny Paragraph 48.

11 49. The allegations in Paragraph 49 call for no response. To the extent a response  
12 might be required, Defendants deny the same.

13 50. The allegations made in Paragraph 50 are Plaintiffs' conclusions of law, to which  
14 no response is required. To the extent a response is required, deny.

15 51. Defendants re-allege and incorporate herein each answer included in Paragraphs 1  
16 through 50.

17 52. The allegations made in Paragraph 52 are Plaintiffs' conclusions of law, to which  
18 no response is required. To the extent a response is required, deny.

19 53. The allegations made in Paragraph 53 call for no response. To the extent a  
20 response might be required, Defendants deny the same.

### 21 AFFIRMATIVE DEFENSES

22 Defendants having previously answered Plaintiffs' Complaint set forth the following by  
23 way of Affirmative Defenses:

24 1. Plaintiff's claims against one of more of the above named Defendants must be  
25 dismissed on the basis of immunity and/or qualified immunity;

1           2.     No conduct in this case was motivated by an evil motive or intent, nor did any  
2 conduct involve reckless or callous indifference to the rights of Plaintiffs, thereby precluding  
3 punitive damages.

4           3.     Plaintiffs' claims are unripe;

5           4.     Plaintiffs' claims do not rise to the level of a justiciable controversy;

6           5.     Plaintiffs have not set forth a "policy" of the highest policymaker of Jefferson  
7 County that violated any right personal to plaintiffs, and thus their allegations do not state a  
8 claim for which relief may be granted, as to one or more defendants;

9           6.     Plaintiffs lack standing to assert a hypothetical violation of rights related to an  
10 alleged mail policy never enforced against plaintiffs;

11           7.     Prior to the filing of this Amended Complaint, plaintiffs were invited to send their  
12 publication to the Jefferson County Jail, and have not done so; plaintiffs are estopped from and  
13 have waived the right to seek equitable relief;

14           8.     Laches precludes some or all of the remedies sought by plaintiffs;

15           9.     Plaintiffs failed to take reasonable steps to mitigate damages, if plaintiffs had any  
16 damages at all;

17           10.    Plaintiffs' improper use of "John Doe" defendants should lead to the dismissal of  
18 all claims against such defendants, and/or such terms and conditions as the Court may deem just  
19 and proper;

20           11.    Defendants reserve the right to amend this Answer to include such further and  
21 other affirmative defenses that may be more fully developed as the case progresses.

22           12.    Until plaintiff properly serves all defendants or seeks and obtains a waiver of  
23 service, the new defendants have not been served with process properly and dismissal of these  
24 defendants may be required by law.

25           **WHEREFORE**, Defendants having previously provided their answer to Plaintiffs'  
26 allegations and having set forth their affirmative defenses, request the following relief:

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DEFENSES TO AMENDED COMPLAINT - 7  
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1           1.       That Plaintiffs' Complaint be dismissed with prejudice and plaintiffs take nothing  
2 thereby; and

3           2.       For attorney's fees pursuant to statute, 42 U.S.C. § 1988, for bringing a frivolous  
4 and wholly meritless claim; and

5           3.       For such other and further relief as the Court may deem just and equitable.

6       DATED this 21<sup>st</sup> day of May, 2012.

7                               FOSTER PEPPER PLLC

8                               s/ Milton G. Rowland

9                               Milton G. Rowland, WSBA No. 15625

10                              Foster Pepper PLLC

11                              422 W. Riverside Ave., Suite 1310

12                              Spokane, WA 99201

13                              Phone: 509-777-1600

14                              Fax: 509-777-1616

15                              E-mail: [rowlm@foster.com](mailto:rowlm@foster.com)



1 **CERTIFICATE OF SERVICE**

2 I, Pam McCain, certify that on May 21, 2012, I electronically filed the foregoing with  
3 the Clerk of the Court using the CM/ECF System, which will send notification of such filing to  
4 the following:

5 Spencer D. Freeman [sfreeman@freemanlawfirm.org](mailto:sfreeman@freemanlawfirm.org)

6 I declare under penalty of perjury under the laws of the state of Washington that the  
7 foregoing is true and correct.

8 Signed at Spokane, Washington, this 21<sup>st</sup> day of May, 2012.

9 Pam McCain

10 Pam McCain  
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DEFENDANTS' ANSWER AND AFFIRMATIVE  
DEFENSES TO AMENDED COMPLAINT - 9  
Case No. 3:12-cv-05145-BHS

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